

August 2004

Update: Criminal Procedure Monograph 2—Issuance of Search Warrants (Revised Edition)

Part A — Commentary

2.2 Initiating the Search Warrant Process

C. Neutral and Detached Magistrate

Insert the following case summary before Section 2.3 at the top of page 4:

An individual who is “employed by and work[s] for a law enforcement agency” is not a “neutral and detached magistrate” qualified to issue warrants under the Fourth Amendment to the United States Constitution. *United States v Parker*, ___ F3d ___ (CA 6, 2004). In *Parker*, the Sixth Circuit Court of Appeals agreed with the district court’s conclusion that despite her “administrative assistant-like” job responsibilities, an individual who worked at a county detention facility under the job title of “chief lieutenant deputy jailer” was engaged in law enforcement to an extent that prohibited her from acting as the county’s trial commissioner, a position from which search and arrest warrants issued.

2.13 The Exclusionary Rule and Good Faith Exception

Add the following text to the July 2003 update to page 25:

The Michigan Supreme Court adopted the “good-faith” exception to the exclusionary rule in *People v Goldston*, ___ Mich ___ (2004). The “good-faith” exception was first announced by the United States Supreme Court in *United States v Leon*, 468 US 897 (1984), as a remedy for automatic exclusion of evidence obtained from a law enforcement officer’s reasonable, good-faith reliance on a search warrant later found to be defective. According to the *Goldston* Court:

“The purpose of the exclusionary rule is to deter police misconduct. That purpose would not be furthered by excluding evidence that the police recovered in objective, good-faith reliance on a search warrant.” *Goldston, supra*, ___ Mich at ___.

The Sixth Circuit Court of Appeals concluded that the “good-faith” exception to the exclusionary rule is inapplicable to the proceeds of a search warrant that was never valid. *United States v Parker*, ___ F3d ___ (CA 6, 2004).

According to the Sixth Circuit:

“In [*United States v*] *Leon*[, 468 US 897 (1984)], the Supreme Court carved out a good-faith exception to the exclusionary rule when officers act in reasonable reliance on a search warrant issued by a neutral and detached magistrate that is subsequently found to be invalid. . . . *Leon* is inapplicable when a warrant is signed by an individual lacking the legal authority necessary to issue warrants. *United States v Scott*, 260 F.3d 512 (6th Cir. 2001). [T]he Supreme Court, in carving out a good-faith exception in *Leon*, ‘presupposed that the warrant was issued by a magistrate or judge clothed in the proper authority.’ *Id.* at 515. The *Scott* court held that a search warrant issued by an individual who is not neutral and detached is void *ab initio*. *Id.* at 515.” *Parker, supra*, ___ F3d at ___.